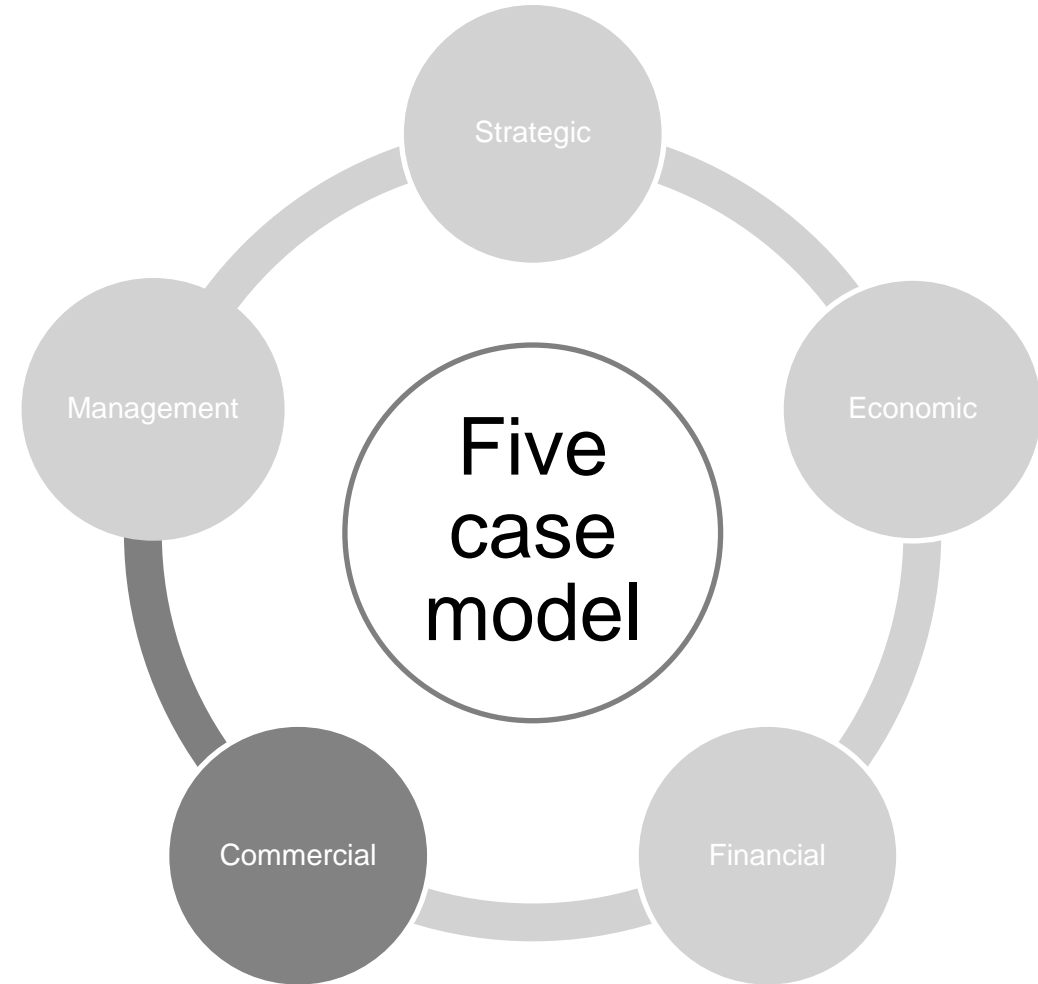


Commercial Case Good Practice

16 April 2021



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Introduction

12-26 April Business Case Festival

Following the Introduction to Business Cases webinar held in November 2020, the Business Case Festival will see the TFDP host a webinar for each of the five cases, walking through towns in more depth the requirements and best practice guidance:

- Strategic case (13th April)
- Economic case (14th April)
- **Commercial case (16th April)**
- Financial case (19th April)
- Management case (26th April)
- Stakeholder Engagement (22nd April)

Objectives

By the end of the Business Case Festival, we aim to help Towns gain a better understanding and knowledge of what is needed to produce a compelling and compliant business case.

Audience

This session is aimed at commercial and procurement practitioners who are contributing to Towns Fund business cases or managing their development.

It is pitched at those with some knowledge and experience of business cases.

Session Objectives

The Commercial Case webinar will provide an overview of the

- Scope and aims of the Commercial Case
- Issues that you will need to consider in order to define
 - the commercial framework,
 - procurement strategy and process and
 - the post contract management arrangements
- Guidance and reference sources to help you develop

Introduction

Agenda

Speakers

- Mark Jones – Nichols, authored the management and commercial cases for Crossrail. Over 30 years experience of planning and managing infrastructure projects including major procurements and third party agreements
- Alistair Godbold – Nichols, Programme Manager with over 30 years experience, Hon Fellow APM and chartered project professional

1. Overview of the Commercial Case

2. Guidance and Resources

3. Commercial Case Topics

4. Tops Tips: Do's and Don'ts

5. Q+A

Overview

What is the Commercial Case?

Purpose:

To demonstrate that there is a viable strategy and plan that will result in commercial arrangement(s) that will deliver value for money

Key questions the Commercial Case aims to address:

- *Are the commercial requirements clear?*
- *Are the participants and their roles clear?*
- *Are the risks understood and allocated?*
- *How will the arrangements be formalised?*
- *What is the status of the market for the project?*
- *How will the project be procured?*
- *How will commercial matters be controlled?*

TFDP Business Case Template: Content of the Commercial Case

Introduction

- Aims, scope, references
- Requirements

Commercial Deliverability

- Participants, roles, risk allocation
- Process and People

Procurement Strategy

- Packaging
- Procurement route
- Supply chain engagement
- Contract form

Wider Issues

- Special provisions, conflicts

Guidance and Resources

References

What is expected?

Guidance

- Template includes prompts reflecting published sources
- Proportionality Guide seeks to contextualise for TF projects

Sources

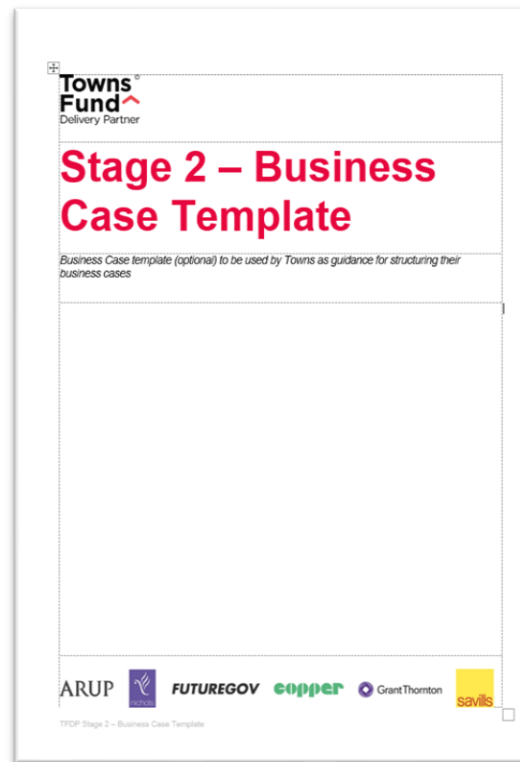
- MHCLG – sets out expectations for TF projects
- HMT – sets the framework and principles
- Cabinet Office – expectations for HMG major projects
- LGA – procurement from a local authority perspective
- IPA – comprehensive framework for planning projects
- NAO – good for lessons from other projects
- CCS – Insights into public procurement, frameworks, processes



TFDP Business Case Template

The optional TFDP Business Case Template and Proportionality Guide is available on the website.

- Best practice **guidance** on structuring your business case
- Includes the **proportionality assessment tool**, designed to help you understand the level of detail required for each project business case
- **Summary document**: as part of the business case process, the summary document is mandatory, and must be submitted to MHCLG for approval



The image shows a 'Proportionality Guide' table with two main sections: 'Commercial case' and 'Management case'. Each section has two columns: 'Less detail' and 'More detail'. The table lists various factors and their corresponding levels of detail, with arrows indicating the range between the two extremes.

	Less detail	More detail
Commercial case		
Number of parties	1	>3
Procurement experience	Procured before	Never procured
Risks and allocation	Clear and obvious	Shared and need defining
Market assessment	Sufficient capacity	Limited capacity
Procurement route	Framework	Negotiated deal
Contract conditions	Standard, used before	Modified, complex
Payment mechanisms	Cost reimbursement	Target price
Incentives	None	Pain / Gain
Assurance required	Minimal	Independent
Value added	Minimal	Multiple opportunities
Management case		
Technical complexity	Low	High
Novelty	No novel aspects	Little experience
Delivery risks	Few and manageable	Many, likely, resource hungry
Dependencies	Few	Many
Delivery model	Single body	Multi-party
Project team	1-3	>5
Project model	Single	Part of a programme
Stakeholders	Passive management	Active management
Assurance required	Minimal	Independent
Benefits	Clear, concise, measurable	Multi-faceted

Synthesising TF and HMT Processes

MHCLG TF Process

↓ Town Investment Plan

↓ Heads of Terms

↓ Project(s) confirmed

➡ ↓ **Business Case(s)**

↓ Assurance

↓ Summary Document

↓ Decision

↓ Funding Release

↓ Delivery

?

HMT Guide to Commercial Case Development

SOC

- Define requirements
- Assessment of the market
- Attractiveness of the deal
- Assessment of risk apportionment
- Assessment of charging mechanisms

Gate Approval – Proceed to Plan Procurement



OBC

14. Determine the procurement strategy
15. Determine the outputs
16. Outline potential risk apportionment
17. Outline potential payment mechanisms
18. Ascertain contractual issues
19. Ascertain accountancy treatment

Gate Approval – Proceed to Procure



FBC

28. Set out negotiated deal and contractual arrangements

Gate Approval – Authority to Contract



Commercial Case Topics

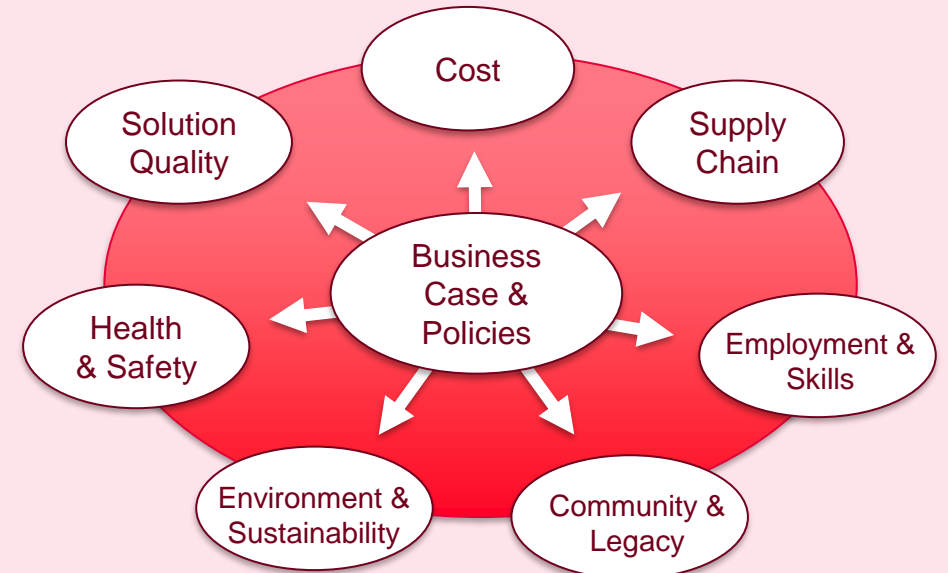
Context

- Commercial aims and objectives
 - What are the commercial outcomes?
 - What does success, value for money look like?
- Components and Requirements
 - Physical – What needs to be bought?
 - Societal – Scope? Development?
 - Commercial – What are the ‘soft’ enablers?
- Constraints
 - What are the principle issues will impact on outcomes?
- Policies
 - Describe any relevant existing policies and how they will be applied
- Complexity
 - Assess complexity with reference to a range of factors e.g. scope, organisation, experience

Considerations

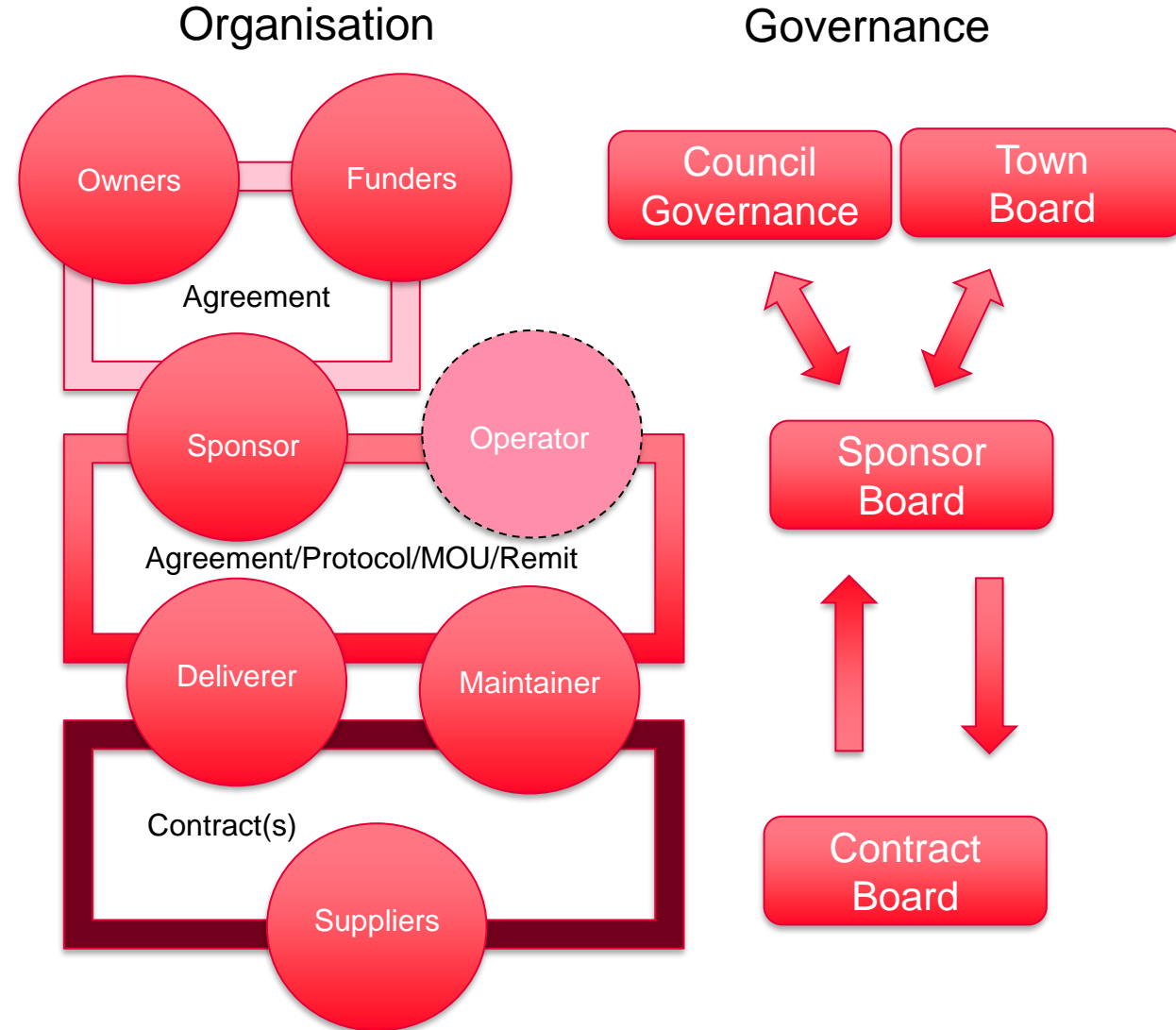
Value for Money – *the optimum combination of cost and quality over the life of the investment.*

Balance Scorecard – *a method of capturing and communicating value drivers to inform requirements and evaluation in procurement*



Commercial Framework

- Organisation
 - Who are the main players?
 - What are their roles and relationships?
 - Who bears what risk?
 - Are there any gaps? Closing them?
 - How will arrangements be formalised?
- Governance – Authorities & Controls
 - Development phase: BC, Services
 - Delivery phase: Works, changes
 - Fit with existing governance?
- Conflicts
 - What conflicts exist or could arise?
 - How will conflicts be managed?



Approach to Risk

Risk management is an integral function of the planning and delivery of projects and risk management needs to start with the business case



- Approach to Risk permeates Business Case
- Types of Risk
 - Consider risks to outcomes by theme
- Allocation
 - Who is best placed to manage?
- Treatment of Risks
 - Accept? Avoid? Transfer? Share?
 - Minimise through mitigation
- Assessment of Risks
 - Start with a qualitative approach
 - Is there a need for a quantitative approach

Risk Themes:

Strategic	Governance	Finance	Legal
Scope	Design	Information	Property
Technology	Construction	Commercial	Reputation

Risk Assessment:

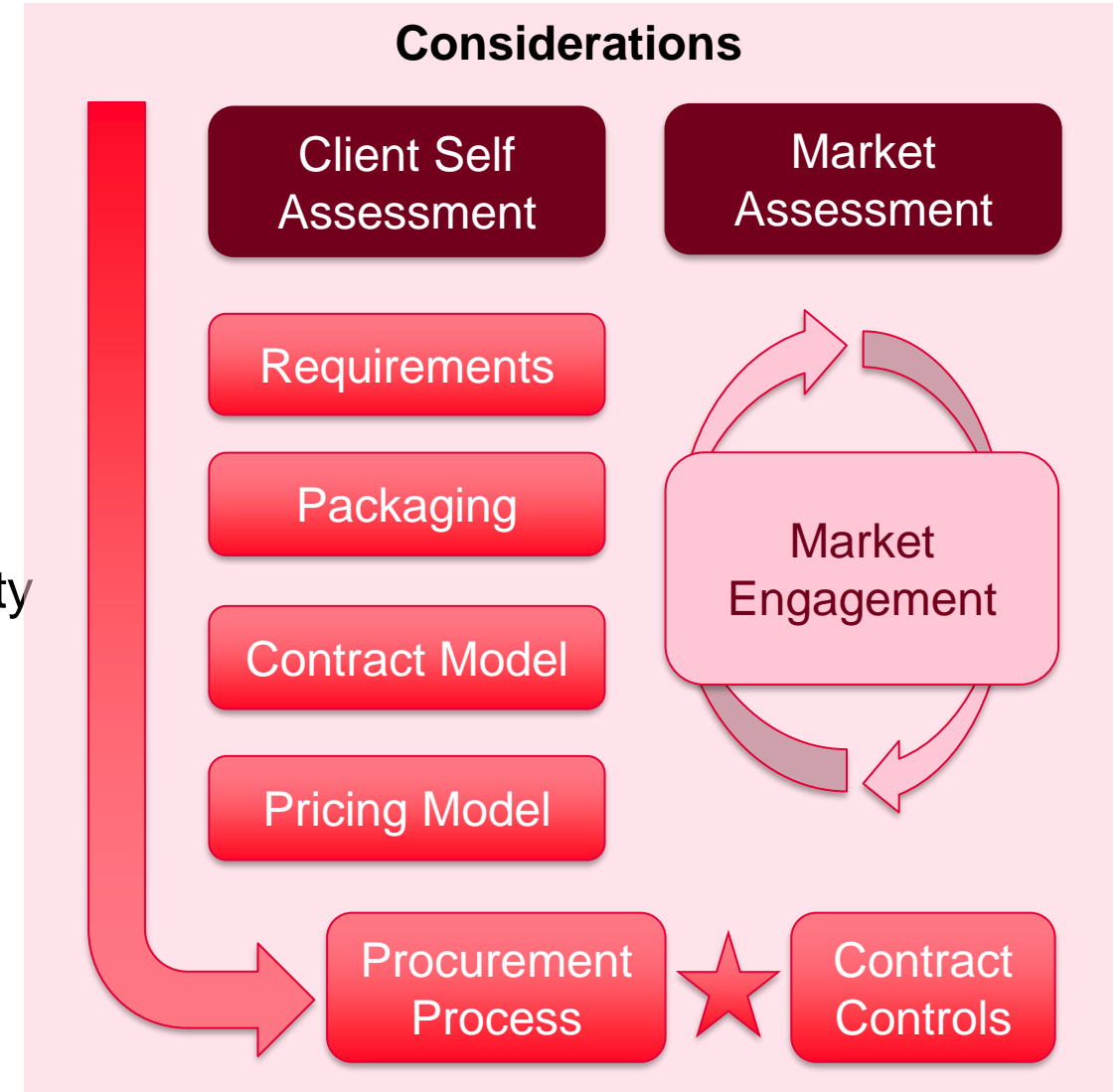
- what's the event?
- what's the causes?
- what's the consequences?



Rank through considering Likelihood and Impacts

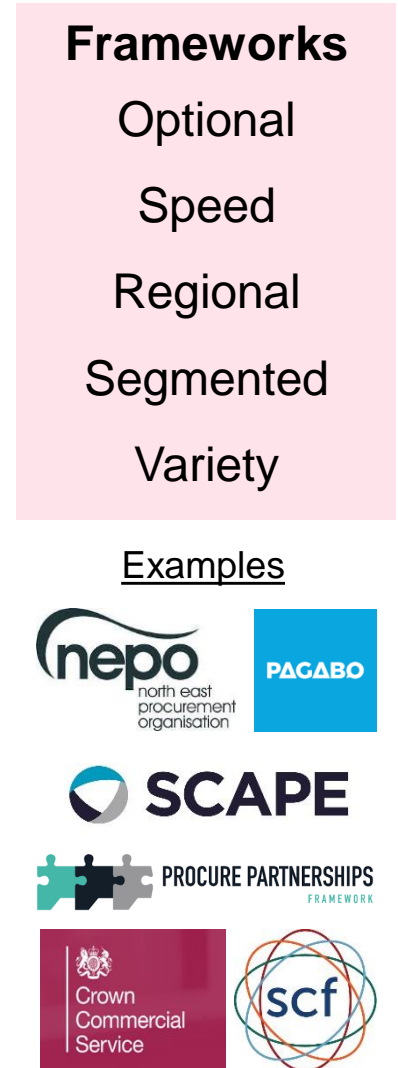
Procurement Strategy Formation

- Capability: Client and Market Assessment
 - What is your capability? Gaps?
 - What is the nature of the market? SME's?
 - What is the state of the market?
- Market engagement: to support good competition
 - How will the market be engaged?
- Packaging considerations:
 - type/size/risk/requirements/capacity/inclusivity
- Contracting Model – typically one of:
 - In-house delivery using available resources
 - Direct management of contracts
 - Management contracting – outsourcing
- Pricing Model Options (linked to Risk allocation)
 - Reimbursable/target cost/lump sum



Procurement Process

- Legal: Public Contract Regulations 2015
 - Thresholds: Works >£4,733,252; Services >£189,330
- Satisfy procurement principles:
 - Equal treatment, non-discrimination, transparency, proportionality
- Consider and choose appropriate routes:
 - Bespoke competition: single stage/multi stage
 - Framework: range of providers
- Consider and choose appropriate procedure:
 - Open, restricted (PQ), competitive dialogue, competitive with negotiation, innovation partnership
- Plan for Invitation to Tender and Evaluation
 - Basis: 'most economically advantageous'
 - Components: reflecting balance scorecard themes



Commercial Deliverability

Challenges

- Show how value will be assured, obligations discharged, and risks managed during delivery and into operations, where applicable

Contracts

- State the what contracts will be put in place (numbers and parties)
- What Conditions of Contract will be used: JCT or NEC or other?
- What, if any special provisions will be required, why?

Commercial Risks

- Summary of key commercial (including financial, legal, property, performance) risks and mitigations (including guarantees, warranties)

Commercial Organisation

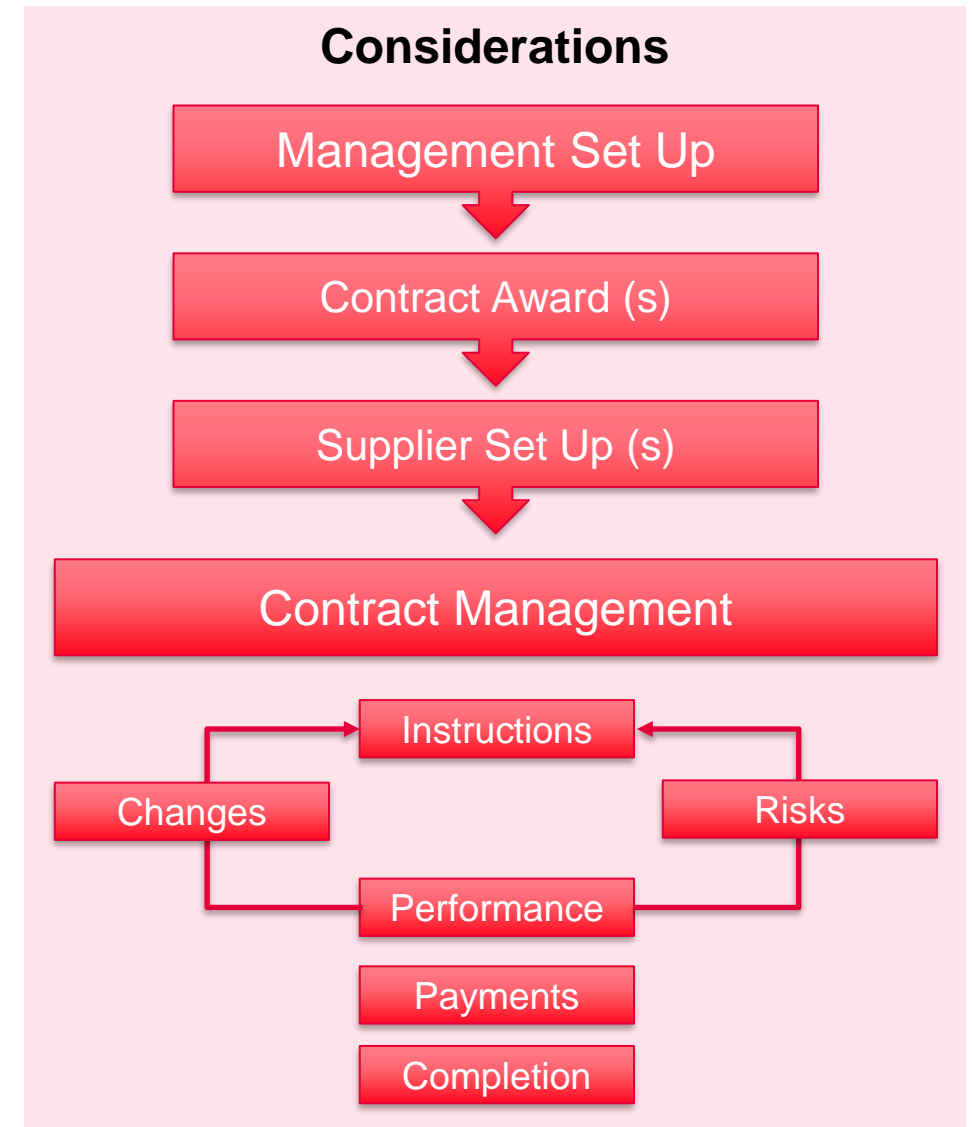
- Describe the key commercial roles and responsibilities
- Confirm arrangements for resourcing the key roles
- (If applicable, state approach to personnel issues e.g. TUPE)

Controls

- What systems, processes, procedures will be used to formalise instructions, outputs, payments, changes, disputes

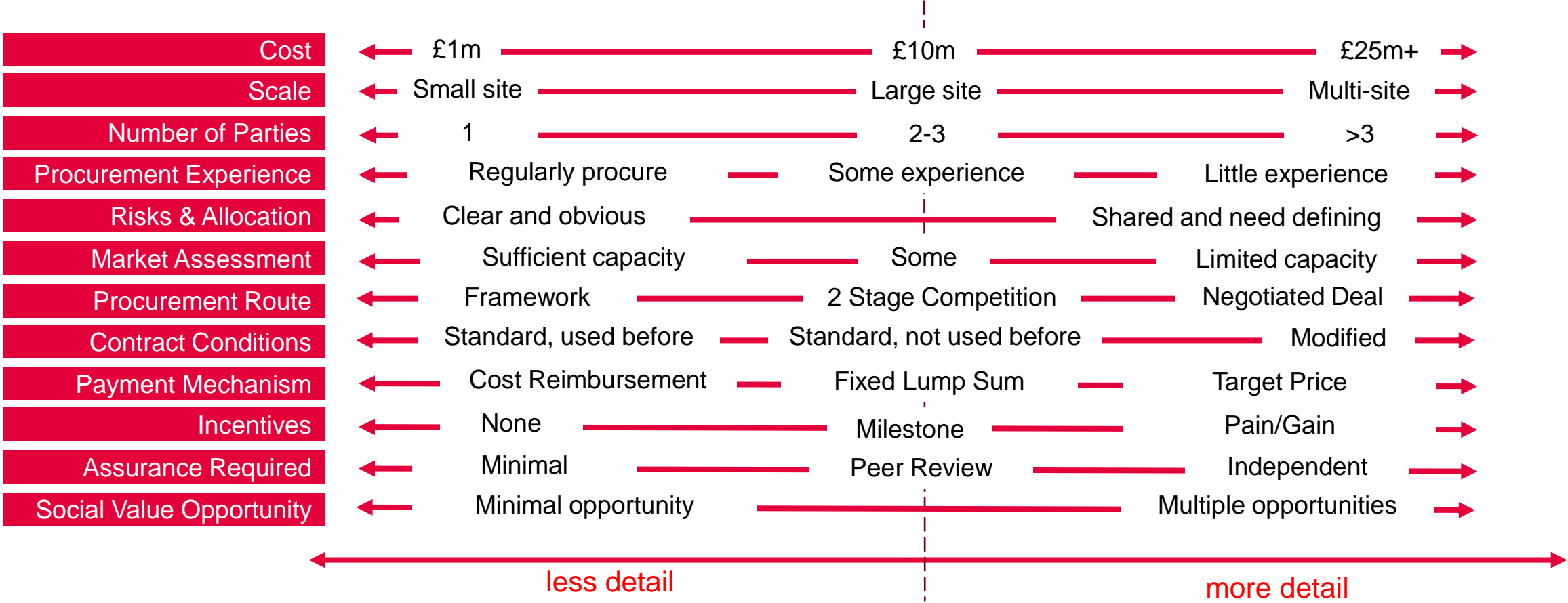
Charging

- Summarise how payments and, if applicable, incentives will be made



Application

Proportionality



Sizing the Commercial Case – Prompts

Small <5 Pages

Small value, simple, standard, discrete project involving minimal stakeholders requiring minimal oversight and can be delivered within existing in-house resources or framework using existing procurement policies, processes and procedures

Project Examples:

1. Land clearance.
2. Cycleway provision

Illustrative cost range £1-5m

Medium 5-10 Pages

Medium value project impacting on range of stakeholders with some non standard elements but can be delivered using existing procurement policies processes and frameworks but using standard contract terms with some need for specialist external support

Project Examples:

1. Station Gateway
2. Small facility new build

Illustrative cost range £5-15m

Large >10 Pages

High value highly visible multi-risk project involving private funding and multiple stakeholders and interfaces requiring dedicated commercial team and adaption of existing procurement policies, processes and or standalone competition with untried contract form.

Project Examples:

1. Tech project
2. Sports Centre

Illustrative cost range £15m+

Top Tips: Do's and Don'ts

Top Tips: Do's and Don'ts

Do's

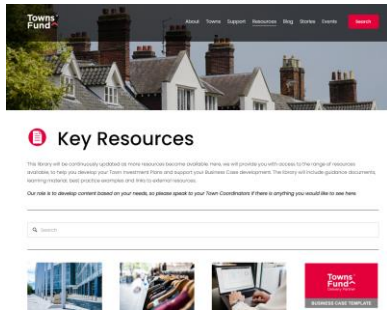
- Keep it simple
- Understand and allocate risks
- Talk to other Towns
- Involve the market
- Use what's available
- Justify with examples
- Test your plans

Don'ts

- Don't break the law!
- Don't jump without a parachute
- Don't overestimate your capability
- Ignore or circumvent the process
- Be enslaved by the guidance
- Underestimate governance timescales

Working with us

You can work with the TFDP to support the delivery of your business case by:



Online resources

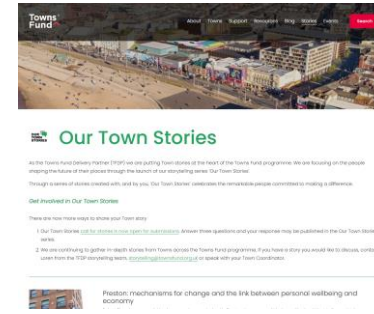
- Blog posts
- Guidance
- Tools



Expert drop-in sessions & 1-2-1 support



Online Workshops



Storytelling: Sharing your projects and experience



Town working group: connecting with other towns

Useful resources

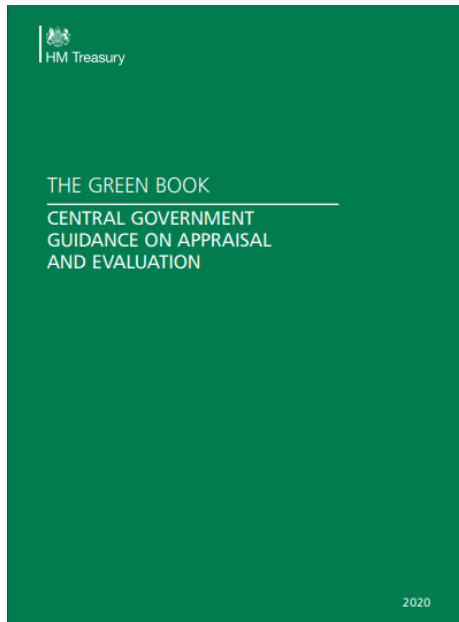
Topic area	Existing resources	Forthcoming resources
Social value	<ul style="list-style-type: none"> • Social Value 101 • Social Value in Procurement (Crown Commercial Service) 	Social Value guidance for business cases
Health and wellbeing	<ul style="list-style-type: none"> • Including Health and Wellbeing in your TIP • Health and Wellbeing Dashboard • Mitigating the impacts of COVID-19 • Evidence in your TIP: Health and Wellbeing 	Estimating health and wellbeing benefits in your economic case
Climate Change / Net Zero	<ul style="list-style-type: none"> • You've declared a Climate Emergency – What next? • You've declared a Climate Emergency... Next steps: Transport • Taking account of Net Zero in your TIP • National Strategic Brief: Climate Change 	Further resources linking to strategic and economic case
Education and training	Introduction to Education, Skills & Enterprise	TBC
Planning & EIA	<ul style="list-style-type: none"> • Addressing your Planning, EIA and HRA needs in your business case • Road to Delivery: Planning & EIA requirements • Introduction to Planning, EIA and HRA • Introduction to Environmental Monitoring & Impact Analysis • EIA Screening Guidance • Biodiversity Net Gain Webinar 	Guidance on Public Sector Equalities Duty

Q+A

Supplementary

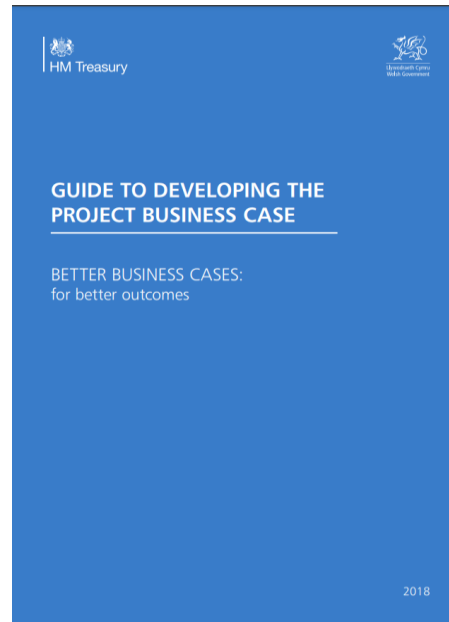
Guidance and Resources

The following guidance and resources are available online to support the Commercial Case:



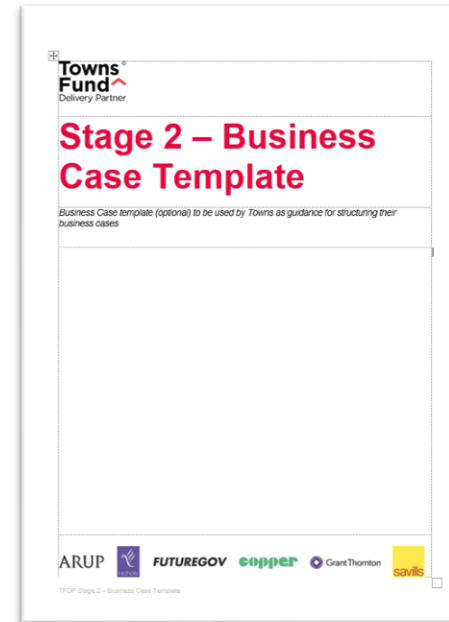
HM Treasury
The Green Book

Guidance on how to appraise policies, programmes and projects



Guide to developing the business case

Guidance on how to appraise policies, programmes and projects



TFDP Business Case Template

Optional business case template and proportionality guide

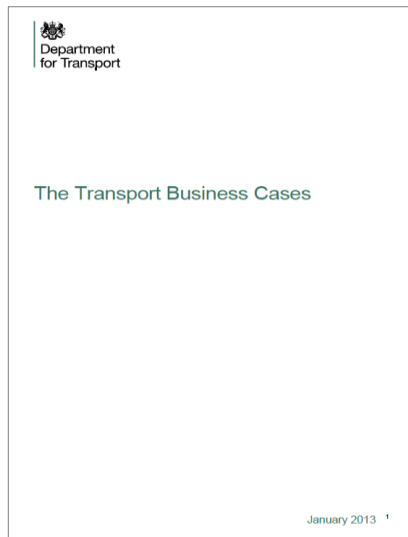


HMG Government Functional Standard: Commercial

Mandatory requirements for the commercial management of central government projects

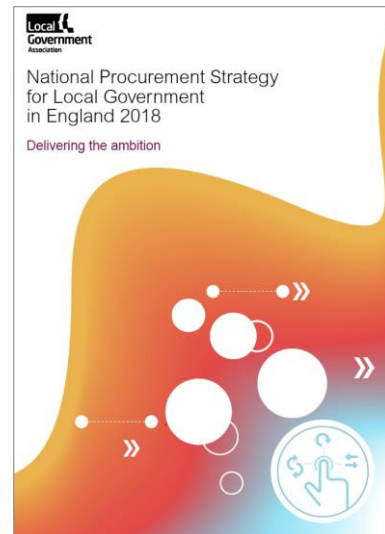
Guidance and Resources

The following guidance and resources are available online to support the Commercial Case:



DfT Guidance for Transport Business Cases

DfT Guidance on how to apply the 5 case model to Transport projects



LGA National Procurement Strategy

Sets out Local Government's ambitions and priorities focusing on key themes



LGA National Construction Category Standard

Guidance on framing Local Authority construction procurement to deliver NPS



CCS Procuring Growth Balanced Scorecard

Guidance on how to develop a life-cycle balance scorecard approach



IPA Project Initiation Routemap

A life-cycle tool to align capability with project complexity